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OFFICE OF ATTORNEY GENERAL

January 8, 1993

ERNEST D. PREATE, Jr.
ATTORNEY GENERAL

Reply To:

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VIA EXPRESS MAIL

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: In the Matter of Implementation of Section 8
of the Cable Television Consumer Protection
and Competition Act of 1992 -- Consumer
Protection and Customer Service, MM Docket
No. 92-263

Gentlemen:

I enclose the original and nine copies of the Comments of
the Attorneys General of Pennsylvania, Massachusetts, New York,
Ohio and Texas for filing in the above-referenced matter.

Very truly yours,

David R. Weyl

David R. Weyl
Deputy Attorney General
Antitrust Section

DRW/caj/fccmm263.drw

Enclosures

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List A B C D E

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¹Representatives of the Offices of Attorney General of the five states submitting these comments are among the several members of the Cable Television Investigative Group ("CTIG") specially appointed by the National Association of Attorneys General ("NAAG") Multistate Antitrust Task Force. The CTIG has been actively investigating the cable television industry since 1988. The views in these comments represent the views of the five Offices of Attorney General submitting them, and have not been reviewed, or concurred in, by NAAG, any Office of Attorney General of any other state, or any other government agency.

led Congress to direct the Commission to set minimum customer service standards for cable operators across the country. For the same reason, Congress has directed, and the Commission should confirm, that Commission-set standards should be immediately effective and self-executing. Further, the Commission should confirm that state regulatory agencies and local franchising authorities retain the authority to promulgate more stringent standards than those established by the Commission.

The NCTA voluntary customer service guidelines are neither sufficiently comprehensive nor specific to ensure that cable television subscribers will receive adequate service from their local cable operators. The NCTA guidelines alone do not satisfy the 1992 Cable Act's consumer protection goals. The need for more detailed standards is especially strong in the area of billing practices, which generate a large percentage of the complaints by customers about cable companies. Therefore, the Commission should adopt stricter standards than the NCTA guidelines contemplate.

**II. The Commission's Customer Service
Standards Do Not Require Local
Government Action to Become Effective**

The Commission seeks comment generally on how its standards for customer service should be translated into actual performance requirements for local cable operators. As a threshold question, the Commission has asked whether its standards are self-executing, i.e., whether its standards will be immediately enforceable without specific implementing action by local and

state authorities. For the reasons set forth below, the states believe that the 1992 Cable Act requires that the Commission's customer standards be self-executing and binding as minimum requirements on local cable operators throughout the country.

Both the plain language of the statute and the legislative history indicate that the Commission's standards were meant to be immediately enforceable against local cable operators. Section 8 of the 1992 Cable Act amends 47 U.S.C. § 552, which deals with consumer protection issues. 47 U.S.C. § 552(b), as amended, states:

(b) COMMISSION STANDARDS.--The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing-

- (1) cable system office hours and telephone availability;
- (2) installations, outages, and service calls; and
- (3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

The plain meaning of this language is that the Commission must promulgate regulations to cover the specific areas of customer service identified in the Act, and must do so by April 3, 1993. Nothing in the Act suggests that the standards, once established by the Commission, can be delayed in their implementation by local franchising authorities.

It is also clear from the legislative history that Congress was concerned that customer service standards now in force did

not adequately protect consumers in many localities. The Senate Report acknowledged that most local franchising authorities have written customer service requirements into their franchise agreements with local operators. However, it has been the experience of franchising authorities that their power to extract better customer service from cable operators is limited, even during franchise renewal negotiations. As the Senate Report recognized,

[m]any cable operators provide poor service to their customers. Phones are not answered promptly, if at all. Offices are open for a minimal number of hours. Service calls take far too long. S. Conf. Rep. No. 102-92, 102d Cong., 2d. Sess. at 20 (1991).

Congress sought to remedy these deficiencies by giving the Commission the task of setting minimum customer service standards applicable throughout the United States. 47 U.S.C. § 552(b). Nothing in the Act suggests that any further action by local and state governments is required to make the Commission's standards applicable to local cable operators.

However, the statute makes it clear that local and state authorities may take affirmative steps to enact stricter customer service standards than those promulgated by the Commission.

47 U.S.C. § 552(c)(2) states:

(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.- Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or

regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

More lenient standards than those established by the Commission are preempted by the 1992 Cable Act. The statutory scheme can be simply stated: the Commission will set minimum standards and local franchising authorities may establish more stringent requirements. H.R. Rep. No. 102-628, 102d Cong. 2d Sess. at 36-37.

The Commission also seeks comment on whether local franchising authorities may impose new customer service requirements prior to renewal of existing franchise agreements.² Clearly, the Congress intended for local franchising authorities to have this ability. The Act does not limit local franchising authorities to impose customer service requirements only at the time of renewal; the Act instead permits franchising authorities to enact and enforce "any consumer protection law" which is not "specifically preempted" by the Act. 47 U.S.C. § 552(c)(1) (emphasis added).

Moreover, typical franchising agreements run for ten years or more. If local governments have to wait for many years before imposing stricter customer service requirements on local cable

²As discussed on page 2, supra, there can be no doubt under the Act that the consumer protection standards established by the Commission are to become effective immediately.

operators, the goal of Congress to provide immediate relief to consumers would be frustrated.

Regarding the Commission's inquiry on remedies in excess of those provided by the 1984 Act, the Commission is encouraged to consider the imposition of fines upon cable operators for violating customer service standards requirements. Lengthy franchised periods make waiting for redress only during renewal periods relatively ineffective.

III. The Commission Should Set Specific Minimum Standards for Performance of Customer Service Requirements

The Commission also seeks comment on the degree of flexibility appropriate to federal customer service standards. The states agree with the Commission that the standards must be "flexible" in the sense that local and state authorities must retain the right to promulgate more stringent requirements than those set by the Commission. The Commission should, however, establish minimum standards applicable to all cable operators across the country. "Flexibility" should not permit any cable operator to avoid providing its customers with adequate service.

The Commission specifically asks for comment concerning the propriety of using the NCTA standards as a benchmark. As described below, the NCTA standards, as currently constituted, would not provide consumers with the protection mandated by the Act.

The first set of NCTA standards deal with office and telephone availability. The NCTA standards prescribe that

company representatives will be available by telephone during normal business hours Monday through Friday. This is plainly inadequate. Instead, consumers need a method of reporting outages when they are observed, which is usually during other than normal business hours.

The NCTA standards themselves implicitly acknowledge the deficiencies of this proposal by suggesting that certain cable systems should have additional telephone hours "based on community needs." Unless there is a community in which customers never need service during evening and weekend hours, every community needs additional telephone service hours beyond "normal business hours."

The Commission should thus require that every cable system have the capability of receiving complaint calls 24 hours a day. This requirement is already included, for example, in the franchise agreement between Comcast and Lower Moreland Township in Pennsylvania. That franchise agreement specifies that Comcast will operate its telephone system so that "complaints and requests for repairs and adjustments may be received on a 24-hour basis."³

Cable operators should also be required to provide their customers with a toll-free telephone number they can call to request services. In Texas, all public utilities are subject to

³This does not mean that a cable operator should be required to have an employee available to answer telephones 24 hours a day; a telephone system capable of receiving messages from subscribers, and recording the date and time of receipt, when employees are not on duty should be sufficient.

this requirement, and it has not proven to be an unreasonable burden.

Additionally, cable operators which own more than one cable system should have employees available to act upon customer calls seven days a week. Flight Systems Cablevision, a cable operator in Silver Spring Township, Pennsylvania, has its service staff on call from 6:00 a.m. - 9:00 p.m. every day. Because much of the television viewing audience watches television on evenings and weekends, cable operators should offer extended service hours to their customers. Even TCI, the nation's largest cable operator, recognizes this need. For its larger systems, TCI makes service calls until 7:00 p.m. on weekdays and also has Saturday service hours.⁴

The second area of NCTA standards relates to installations, outages and service calls. The Commission should require that all requests for service be answered within 24 hours unless a cable operator can demonstrate the existence of truly extraordinary circumstances. This is not an unreasonable standard. For example, in Lower Moreland Township, Pennsylvania, Comcast has agreed that it "shall maintain a repair and

⁴The NCTA standards for telephone response time fall short of requirements that have been found appropriate for some local telephone companies. The Pennsylvania Public Utility Commission requires local telephone companies to answer 90% of operator assistance calls within 10 seconds and 85% of all calls seeking repair service or to the business office within 20 seconds. An "answer" is defined as occurring when "an operator or other representative is ready to render assistance and accept information necessary to process the call." Putting a customer on hold does not constitute an answer. 52 Pa. Code § 63.59.

maintenance crew capable of responding to subscriber complaints and requests for service within 24 hours after receipt of the complaint or request."

When outages exceed 24 hours in duration, cable operators should be required to issue pro rata credits or rebates to subscribers affected by the outages. This requirement has been imposed on cable operators in Massachusetts, and on public utilities in many states.

The appointment windows for service calls should be "morning" or "afternoon." Supplemental hours for service calls should be available on evenings or weekends.⁵

The third area of NCTA standards relates to communications and billing. Here, the NCTA standards are so ambiguous as to be useless. It is patently insufficient to promulgate a standard which states that bills "will be clear, concise and understandable," and that refund checks "will be issued promptly." Billing practices appear to be the single greatest source of complaints about cable operators. In Massachusetts, for example, almost 70% of the 8,000 complaints received each year by the state Cable Commission relate to billing practices.

The Commission should not underestimate the importance to consumers of setting specific minimum standards with regard to billing practices. Consumer protection officials routinely

⁵For example, the New York State Commission on Cable Television requires that cable companies give subscribers the opportunity to schedule service calls during the morning or afternoon. N.Y. Admin. Code tit. 9, § 596.8 (1991).

receive complaints about bills being "due on receipt," a meaningless concept; about charges for services and equipment never ordered; about incomprehensible bill formats; about the imposition of late charges without notice; and about service shutoffs without notice. Some cable operators in Pennsylvania routinely refuse to pay refunds of small amounts to customers after termination of service unless specifically requested to do so.⁶ Such practices should be specifically prohibited by the Commission. "Flexibility" in this context is clearly unwarranted.

The Commission should, therefore, adopt the following minimum standards for billing by all local cable operators:

- Bills should list each charge and credit separately. Charges and credits for each tier, premium service, pay-per-view event, outlet and piece of equipment used by the customer must be itemized.
- Bills should specify a due date at least 20 days after the billing date. Bills should not proclaim that they are "due on receipt."
- If late charges are imposed, the date on which they take effect and the amount of any late charges should be specified on each bill.
- If service to a customer is to be shut off for nonpayment, the customer should receive at least 15

⁶This, of course, is not an exhaustive list of complaints made to local and state regulatory authorities about cable operators.

days' notice of the shutoff date and the amount which must be paid to avoid shutoff.

- Where nonpayment is a result of a dispute over the billed amount, a customer complaint to the appropriate regulatory authority will suspend shutoff until the regulatory authority resolves the dispute.
- Fees for all services and equipment must be disclosed at the time service is initiated; any time the fees change; and, in any event, at least once every 12 months.
- Refunds (of all amounts due the customer) must be issued within 30 days after termination of service.⁷

IV. Conclusion

The Commission should adopt customer service standards as outlined above and make them effective immediately enforceable against local cable operators throughout the country.

Dated: January 8, 1993

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General of the
Commonwealth of Pennsylvania

By: 

THOMAS L. WELCH
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Antitrust Section

⁷The Pennsylvania Public Utility Commission has, in the telephone company context, adopted similar -- though more stringent -- regulations to ensure that customers are made aware of the charges imposed on them. See Attachment A.

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Suspension of service—A temporary cessation of service without the consent of the customer.

Telephone company—A public utility which provides telephone service subject to Commission jurisdiction.

Telephone service—The transmission of messages or communications by telephone. The term includes local exchange service and interexchange service.

Termination of service—Permanent cessation of service after a suspension without the consent of the customer.

Authority

The provisions of this § 64.2 amended under 66 Pa.C.S. §§ 501, 1301—1325 and 1501—1511.

Source

The provisions of this § 64.2 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354; amended July 14, 1989, effective July 15, 1989, 19 Pa.B. 3042. Immediately preceding text appears at serial pages (125498) and (95645) to (95646).

Cross References

This section cited in 52 Pa. Code § 64.73 (relating to notice when dispute pending).

Subchapter B. PAYMENT AND BILLING STANDARDS

Sec.

- 64.11. Method of payment.
- 64.12. Due date for payment.
- 64.13. Billing frequency.
- 64.14. Billing information.
- 64.15. Advance payments.
- 64.16. Accrual of late payment charges.
- 64.17. Partial payments.
- 64.18. Application of partial payments between past and current bills.
- 64.19. Rebilling.
- 64.20. Transfer of account.
- 64.21. Separate billing for nonbasic service, interexchange service and local exchange service.
- 64.22. Billing service for interexchange carriers.

§64.11. Method of payment.

Payment may be made in any reasonable manner including payment by personal check, unless the customer within the past year has tendered a check which has been returned by a financial institution for a reason for which the customer is at fault. When payment is made by personal check which is returned by a financial institution for a reason for which the

customer is at fault, the local exchange carrier may impose a handling charge, the amount of which shall be set forth in the carrier's approved tariff. No handling charge will be imposed if the customer stops payment due to a good faith billing dispute.

Authority

The provisions of this § 64.11 amended under 66 Pa.C.S. §§ 501, 1301—1325 and 1501—1511.

Source

The provisions of this § 64.11 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354; amended July 14, 1989, effective July 15, 1989, 19 Pa.B. 3042. Immediately preceding text appears at serial page (95646).

Cross References

This section cited in 52 Pa. Code § 64.2 (relating to definitions).

§64.12. Due date for payment.

The due date for payment of a monthly bill shall be at least 20 days from the date of mailing by the local exchange carrier to the customer.

(1) *Extension of due date to next business day.* If the last day for payment falls on a Saturday, Sunday or bank holiday or another day when the offices of the local exchange carrier which regularly receive payments are not open to the general public, the due date shall be extended to the next business day.

(2) *Date of payment by mail.* For a remittance by mail, one of the following applies:

(i) Payment shall be deemed to have been made on the date of the postmark.

(ii) The local exchange carrier may not impose a late payment charge unless payment is received more than 5 days after the due date.

(iii) The local exchange carrier may not mail or deliver notice of suspension until at least 5 days after the stated due date.

(3) *Date of payment to branch office or authorized payment agent.* The effective date of payment to a branch office or authorized payment agent is the date of actual payment at that location.

(4) *Multiple notifications.* When a local exchange carrier advises a customer by multiple notices or contacts and they contain different due dates, the date on or before which payment is due shall be the latest date contained in the notices listed in this section.

Authority

The provisions of this § 64.12 amended under 66 Pa.C.S. §§ 501, 1301—1325 and 1501—1511.

Source

The provisions of this § 64.12 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354; amended July 14, 1989, effective July 15, 1989, 19 Pa.B. 3042. Immediately preceding text appears at serial pages (95646) to (95647).

§64.13. Billing frequency.

A local exchange carrier shall render a bill once every billing period to customers in accordance with approved rate schedules.

Source

The provisions of this § 64.13 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354.

§64.14. Billing information.

(a) Every bill rendered shall state clearly the following information:

- (1) The date of the bill.
- (2) The due date on or before which payment shall be received to avoid an account being considered delinquent.
- (3) The beginning and ending dates of the billing period for service, excluding toll usage and equipment.
- (4) The amount due for service and equipment during the current billing period, and the charges for toll service, local usage, taxes and applicable surcharges.
- (5) An itemized statement of toll charges listing the date, time, destination, duration and rate period for each toll call.
- (6) Amounts for security deposits owed by or credited to existing customers. This amount shall be separately stated on each bill if a security deposit remains unpaid.
- (7) The total amount of payments and other credits made to the account during the current billing period.
- (8) The amount of late payment charges.
- (9) The total amount due.
- (10) A statement directing the customer to register a question or complaint about the bill prior to the due date, with the address and telephone number where the customer may direct questions or complaints.
- (11) A statement that a rate schedule, an explanation of how to verify the accuracy of a bill, and an explanation of the various charges, if applicable, can be obtained by calling the local business office of the local exchange carrier.

(b) At least annually, and upon request of the customer, the local exchange carrier shall provide an itemization of all service equipment and other recurring charges.

(c) Upon request for new or additional services, the local exchange carrier shall inform the customer of the monthly recurring charge for service and each item of equipment ordered by the customer and shall provide a minimum and maximum estimate of applicable nonrecurring charges. The local exchange carrier shall maintain a record of the estimates given for 90 days. The local exchange carrier shall have available a printed explanation of alternative rates and services.

(d) Every final bill shall contain a statement that a subsequent bill will be rendered if needed to collect charges, such as additional tolls or lost equipment.

Source

The provisions of this § 64.14 adopted November 30, 1984, effective January 1, 1985, 15 Pa.B. 4354.

Cross References

This section cited in 52 Pa. Code § 69.251 (relating to plain language—statement of policy).

§ 64.15. Advance payments.

Payment may be required before furnishing any of the following services:

- (1) The construction of facilities and furnishing of special equipment.
- (2) Temporary service for short-term use.

Source

The provisions of this § 64.15 adopted November 30, 1984, effective January 1, 1985, 15 Pa.B. 4354.

§ 64.16. Accrual of late payment charges.

(a) A local exchange carrier is prohibited from levying or assessing a late payment charge on an overdue bill in an amount which exceeds 1.25% per month on the full unpaid and overdue balance of the bill. These charges are to be calculated only on the overdue portions of the bill. The rate, when annualized, may not exceed 15% per annum—computed by the simple interest method—and may not include previously accrued late payment charges. A late payment charge may not be assessed against an outstanding security deposit.

(b) An additional charge, fixed fee or penalty designed to recover the cost of a subsequent rebilling may not be charged.

Source

The provisions of this § 64.16 adopted November 30, 1984, effective January 1, 1985, 15 Pa.B. 4354.

Cross References

This section cited in 52 Pa. Code § 64.19 (relating to rebilling); and 52 Pa. Code § 64.171 (relating to duties of parties: undisputed portion of bills; interest on overpayment).

§ 64.17. Partial payments.

(a) Payments received by a local exchange carrier which are insufficient to pay the balance due for telephone service and nonbasic service shall first be applied to telephone service.

(b) Payments received by a local exchange carrier which are insufficient to pay the amount due for telephone service shall first be applied to local exchange service.

(c) This section may not apply if the customer supplies written instructions specifying how a partial payment should be applied.

Source

The provisions of this § 64.17 adopted November 30, 1984, effective January 1, 1985, 15 Pa.B. 4354.

§ 64.18. Application of partial payments between past and current bills.

In the absence of written instruction, or a disputed bill or a payment arrangement, payments received by the local exchange carrier which are insufficient to pay a balance due both for earlier services and for services billed during the current billing period shall first be applied to the balance due for earlier services, including late payment charges.

Source

The provisions of this § 64.18 adopted November 30, 1984, effective January 1, 1985, 15 Pa.B. 4354.

§ 64.19. Rebilling.

(a) *Underbilling.* A local exchange carrier may issue a make-up bill for unbilled services resulting from a billing error accrued within 4 years of the date of the bill under the following conditions:

(1) The local exchange carrier shall provide the ratepayer with a written explanation of the reason for the make-up bill and a statement that the customer may spread the payments over a period, as described in paragraph (2).

(2) The payment period may, at the option of the customer, be at least as long as the period during which the excess amount accrued or at least as long as necessary so that the total amount billed in 1 month is not greater than the average amount billed for 1 month plus 50%, whichever period is greater. A late payment charge may not be assessed on unbilled service when payments are made as described in this paragraph.

(b) *Overbilling.* When an overbilling occurs, the local exchange carrier shall credit the customer's account in the amount of the overbilling, including applicable taxes, for up to 4 years before discovery of the overbilling, unless the customer requests reimbursement in one lump

sum. A charge, in the amount stated in § 64.16 (relating to accrual of late payment charges), shall be paid on the overbilled amount where at least 30 days have elapsed between payment of the overbilled amount and the credit or refund thereof.

(c) *Rebilling*. The local exchange carrier shall notify the Commission of rebilling affecting more than 10% of its residential customers within 90 days of the rebilling.

Authority

The provisions of this § 64.19 amended under 66 Pa.C.S. §§ 501, 1301—1325 and 1501—1511.

Source

The provisions of this § 64.19 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354; amended July 14, 1989, effective July 15, 1989, 19 Pa.B. 3042. Immediately preceding text appears at serial page (95649).

§64.20. Transfer of account.

(a) In the event of termination or discontinuance of service within the last 4 years, the local exchange carrier may transfer an outstanding amount due to a new or existing residential service account of the same customer.

(b) In the event of discontinuance of service, the local exchange carrier may continue pending termination procedures at a new or existing residential service account of the same customer.

(c) In the event of a termination of service, the local exchange carrier may transfer to the account of a third party guarantor an amount not to exceed the limit of the guarantee.

Source

The provisions of this § 64.20 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354.

§64.21. Separate billing for nonbasic service, interexchange service and local exchange service.

(a) Charges for nonbasic service, interexchange service and local exchange service shall be billed separately.

(b) A customer's failure to pay charges for nonbasic service may not be a basis for termination of local exchange service.

(c) A customer's failure to pay charges for interexchange service may not be a basis for termination of local exchange service unless the local exchange carrier is technically unable to terminate interexchange service without also terminating local exchange service.

Source

The provisions of this § 64.21 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354.

§64.22. Billing service for interexchange carriers.

A local exchange carrier may provide billing services for interexchange carriers under the following conditions:

- (1) The local exchange carrier assumes responsibility for settling disputes involving accounts receivable.
- (2) The local exchange carrier applies its deposit rules.

Authority

The provisions of this § 64.22 amended under 66 Pa.C.S. §§ 501, 1301—1325 and 1501—1511.

Source

The provisions of this § 64.22 adopted November 30, 1984, effective January 1, 1985, 14 Pa.B. 4354; amended July 14, 1989, effective July 15, 1989, 19 Pa.B. 3042. Immediately preceding text appears at serial page (95650).

Subchapter C. CREDIT AND DEPOSIT STANDARDS POLICY**Sec.**

- | | |
|--------|--|
| 64.31. | Policy statement. |
| 64.32. | Credit standards. |
| 64.33. | Payment of outstanding balance. |
| 64.34. | Written procedures. |
| 64.35. | Deposit requirements for existing customers. |
| 64.36. | Method of making deposit. |
| 64.37. | Refund of deposits. |
| 64.38. | Application of deposit to bills. |
| 64.39. | Periodic review. |
| 64.40. | Refund statement. |
| 64.41. | Interest. |

Cross References

This subchapter cited in 52 Pa. Code § 64.181 (relating to restoration of service after suspension).

§64.31. Policy statement.

An essential ingredient of the credit and deposit policies of each local exchange carrier shall be the equitable and nondiscriminatory application of those precepts to potential and actual customers throughout the service area without regard to the economic character of the area or a part thereof. Deposit policies shall be based on the credit risk of the applicant